

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	MB Docket No. 14-82
)	
PATRICK SULLIVAN)	FRN 0003749041, 0006119796,
(Assignor))	0006149843, 0017196064
)	
and)	Facility ID No. 146162
)	
LAKE BROADCASTING, INC.)	File No. BALFT-20120523ABY
(Assignee))	
)	
Application for Consent to Assignment of)	
License of FM Translator Station W238CE,)	
Montgomery, Alabama)	

To: Marlene H. Dortch, Secretary
Attn: Chief Administrative Law Judge Richard L. Sippel

**Enforcement Bureau's Comments
on the Commission's Titus Decision**

1. On November 20, 2014, the Presiding Judge directed the parties in this proceeding to file comments regarding the impact, if any, that the Commission's ruling in *David Titus*, Decision, FCC 14-177 (rel. Nov. 6, 2014) ("Decision" or "Titus Decision"),¹ may have on the instant proceeding. *See Patrick Sullivan, et al.*, Order, FCC 14M-35 (ALJ, rel. Nov. 20, 2014). The Chief, Enforcement Bureau ("Bureau"), by his attorneys, hereby provides the following comments.²

2. In his Order, the Presiding Judge specifically directed the parties to comment on:

¹ The Bureau notes that there is pending before the Commission a Petition for Reconsideration of the Titus Decision, filed by Mr. Titus on December 4, 2014.

² The Order contemplated that the parties would include their comments in a Joint Status Report that they are filing today. The Bureau elected to submit its comments separately in the instant filing.

(a) the impact the Decision . . . on the quantity and quality of proof that the Applicants need to introduce in order to carry their burden; (b) other ways, if any, that the Decision increases or decreases the discovery needs of the Bureau or the Applicants; and (c) other considerations or concerns arising from the Decision in David Titus.

3. As a threshold matter, the Titus Decision fundamentally established a very high bar for a licensee or applicant who is an adjudicated sex offender to demonstrate that he has been rehabilitated and is qualified to be or remain a Commission licensee. This is particularly so if the felony for which he or she was convicted may be characterized as “shockingly evil.”³ Relying on its *Character Policy Statement*, the Commission emphasized that a particularly egregious crime committed by a convicted sex offender not only *may* be disqualifying, but “is *prima facie* disqualifying.”⁴ The high bar for rehabilitation that the Commission adopted in the Titus Decision is entirely consistent with the standard that the Hearing Designation Order advanced in the instant proceeding. Thus, the Hearing Designation Order in the instant proceeding proposed that the Presiding Judge consider whether a convicted sex offender should be found qualified to be a licensee “only in the most extraordinary and compelling of circumstances.”⁵

³ Decision, at para. 11.

⁴ *Id.* at para. 11, *see also*, *Character Qualifications*, 102 FCC 2d 1179 (1986) (1986 Policy Statement), *recon. dismissed/denied*, 1 FCC Rcd 421 (1986); *Policy Regarding Character Qualifications in Broadcast Licensing*, 5 FCC Rcd 3252 (1990) (1990 Character Policy Statement), *modified*, 6 FCC Rcd 3448 (1991), *further modified*, 7 FCC Rcd 6564 (1992). The Commission noted in its Titus Decision that misconduct of the kind committed by Mr. Titus was disqualifying “[e]specially in light of the known risks of amateur radios in the hands of sex offenders” Michael Rice, the sole principal in Lake Broadcasting, Inc., like Mr. Titus, is an amateur radio licensee. In addition, it is the Bureau’s opinion that a commercial radio broadcast station is as enticing to a vulnerable youngster as an amateur radio station given the music and contests that many radio broadcast stations play as well as the prizes and gifts that many radio broadcast stations give away.

⁵ *See Patrick Sullivan, et al.*, Hearing Designation Order, DA 14-703 (MB, rel. May 23, 2014)(HDO), at n. 60 (“In evaluating the evidentiary record in this proceeding, the Presiding Administrative Law Judge should consider whether crimes involving child sex abuse are so egregious, so utterly shocking to the conscience, and so patently inconsistent with the public interest, that a person so convicted, regardless of when the conviction took place, may be determined to be qualified to be a Commission licensee only in the most extraordinary and compelling of circumstances.”)

4. It also is the Bureau's reasoned opinion based on its analysis of the Titus Decision that, although the Presiding Judge always retains broad discretion to adjudicate licensing and basic qualifying issues, he may not substitute his own limited expertise or experience for that of local law enforcement authorities in determining the risks that a registered sex offender may pose to the community. Indeed, based on the Titus Decision, a presiding Administrative Law Judge should afford considerable deference to a determination by state law enforcement authorities to place a convicted felon on its list of registered sex offenders in determining whether an applicant or licensee poses a continuing threat to the community. According to the Commission, "[i]t is especially appropriate to defer to state judgments about sex offenders, in view of the fact that many states treat sex offenders differently from other felons."⁶ Since many states consider convicted sex offenders to be a special class of felons, and the Commission has instructed that it will defer to state authorities on the matter of whether convicted sex offenders are a threat to the community, it necessarily follows that Commission considers convicted sex offenders to be a special class of felons in determining whether they are qualified to be licensees.

5. The Titus Decision also clarified that the Commission may closely scrutinize even a decades-old conviction for a particularly egregious sex offense in determining whether a registered sex offender is qualified to be a Commission licensee. "While the passage of time may in some cases diminish the significance of a felony conviction, we do not believe that is the case where the offender is currently designated as a high risk sex offender, signifying that local authorities consider him to be an ongoing risk to the community."⁷

⁶ Decision, at para. 16.

⁷ *Id.* at para. 18. The Commission also noted in its Decision that its analysis about Mr. Titus' risk to the community and rehabilitation would not have differed significantly had he been judge as something less than a high risk sex offender. *See id.* at note 64.

6. Additionally, the Commission acknowledged that many factors are considered when determining whether a convicted sex offender has been rehabilitated, including medical evaluations, character testimonials, and an individual's expression of contrition.⁸ However, the Commission made clear that the determination by state authorities on the risks that a convicted sex offender may pose to the community is perhaps the most reliable barometer of whether the individual has been rehabilitated. Thus, the Commission will not contravene the judgment of those authorities or "undermine their primary authority to evaluate [a felon's] risk to the community."⁹

7. The extent to which the Titus Decision will impact the Bureau's discovery needs in the instant case cannot yet be determined. The Bureau only recently received from opposing counsel a medical evaluation for Mr. Rice. The Bureau is currently reviewing the report but has not yet had the opportunity to depose Mr. Rice or any other individuals, including state law enforcement authorities, about the risk that Mr. Rice poses to the community. In any event, it is clear, according to both the Titus Decision¹⁰ and the Hearing Designation Order¹¹ in this case, that the burden squarely is on Mr. Rice -- having previously been found to be unqualified -- to demonstrate that he has been rehabilitated. Should it be conclusively determined that Mr. Rice is considered by state authorities to be a risk to the community, the Titus Decision may present appropriate authority for the Presiding Judge to expeditiously resolve this proceeding at trial or via summary disposition.

⁸ See *id.* at note 41.

⁹ *Id.* at para. 18.

¹⁰ See *id.* at para. 13.

¹¹ See HDO at para. 28.

Respectfully submitted,
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December 8, 2014


CERTIFICATE OF SERVICE

I, William Knowles-Kellett, counsel for the Enforcement Bureau's Investigations & Hearings Division, certify that on this 8th day of December 2014, I sent via First Class United States Mail and via email copies of the foregoing Enforcement Bureau's Comments on the Commission's Titus Decision to:

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A caused a copy of the foregoing to be served via hand-delivery to:

The Honorable Richard L. Sippel
Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, S.W., Room 1-C861
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William Knowles-Kellett